HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's Order whether the case is or not approved for reporting)

(Chapter VIII, Rule 32(2) (b)

Description of Case

A.O. No. 152 of 2005

Mohd. Israeel.. Appellant

Versus

The Commandant 31st Btn. P.A.C.
& an0ther Respondents

Approved for Reporting

Not approved for reporting Date of decision 20.11.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from order No. 152 of 2005

Mohd Israeel s/o Fazal Nabi r/o Mohalla Khatari
Ramnagar, District Nainital ..... Appellant

Versus

1. The Commandant 31st Battalion P .A.C. Rudrapur,
   District Udham Singh Nagar
2. State of Uttaranchal .....Respondents

Sri Z.U. Siddiqui, Advocate for the petitioner
Sri N.C. Gupta, Standing counsel for the respondents

Dated: November 20, 2006

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

Hon. Rajesh Tandon, J.

1) This appeal has been preferred against the Award dated 17.8.2004, passed by the Motor Accident Claims Tribunal, Haldwani, Nainital for enchancement of the amount of award.

2) The appellant Mohd. Israeel preferred a claim petition under section 166 of the Motor Vehicles Act, for the grant of compensation on account of the injuries sustained by him in a motor vehicle accident. According to the claimant on the fateful day on 30.10.2000 at 3.30 PM he was going to Haldwani from Bhimtal by his scooter No. U.P.02 A-5799 along with his nephew. When they reached near village Salari, they stopped the scooter by the side of the road and were waiting for some one and all of a sudden a truck No. UP 02-A/1728 belonging to P.A.C. dashed the scooter from back side. According to the

claimant the offending truck was being driven rashly and negligently. The deceased sustained grievous injuries in the accident and his left leg has been crushed below the knee. According to the claimant he incurred Rs.1,20,000/- in his treatment. He has become handicapped and is unable to do his business. He claimed Rs.five lakhs as compensation.

3) The respondents have filed joint written statement and denied the allegation made in the claim petition. They have submitted that on 30.10.2000, the drivers of P.A.C.were getting training for driving vehicles on hill roads. They went 75 kms. Towards Almora and thereafter returned to Haldwani. They denied that any such accident had taken place near village Salari.

4) The claimant examined himself as P.W.1, Mahboob Ali as P.W. 2 and Dr. Sahilendra Kumar Mishra as P.W.3. The Claimant has also filed copy of the F.I.R., injury certificate, cash memo of medicines and disability certificate.

5) Respondents have examined Mohan Singh Negi as D.W.1, However, no documentary evidence was filed by them.

6) On the basis of the evidence adduced by the claimant, the Claims Tribunal has held that the accident had taken place due to the rash and negligent driving by the Truck driver of P.A.C.

7) So far as the compensation is concerned the Tribunal has recorded the finding that the claimant has submitted verified cash memos and receipts of medical expenses to the extent of Rs.22,000/- and as suck the Tribunal has awarded Rs.22,000/- to the claimant for medical expenses. The claimant Tribunal has assessed the monthly income of the claimant as Rs.4,500/-or Rs.54,000/- per annum and considering the age of claimant as 35 years selected the multiplier of 16. After multiplying 54,000

by 16 the amount of compensation was worked out to Rs.8,64,000/-. As the claimant was 40% disabled, therefore, he was awarded a sum equivalent to 40% of Rs.8,64,000/- i.e. Rs. 3,45,600/-. Thus the claimant was awarded a total sum of Rs.3,67,600/-towards compensation.

8) Feeling aggrieved by the award of the Claims Tribunal the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, for enchancement of the amount of compensation. Counsel for the appellant has submitted that the claims Tribunal has erred while awarding only Rs.3,67,600/- towards compensation. The counsel for the appellant has also submitted that the Claims Tribunal has not awarded interest as provided under section 171 of the Motor Vehicle Act.

9) So far as the amount incurred in the treatment of the claimant, the Claims Tribunal has awarded Rs.22,000/- after taking into consideration the cash memos and receipts which were duly verified by the doctor or the medicines which were purchased on the prescription of the doctor.

10) We have perused the record and examined the documents filed by the claimant per list 6-C and 32-C on record and there is no need to interfere with regard to the finding of the Claims Tribunal regarding medical bills.

11) So far as award of compensation for permanent disability is concerned, the appellant has submitted that the compensation should have been awarded keeping into consideration the profession of the claimant and nature of disability caused to him.

12) The Apex court in **Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co. (1971) 1 SCC 785** has observed as under:

> *"The pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture.*
>
> * * * * *
>
> *The determination of the question of compensation depend on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error."*

13. Relying upon the case of Seheikhupurta Transport Co. (supra) the Apex Court in the case **Nagappa vs. Gurudayal Singh (2003) 2 SCC 274,** has observed as under:

> **26.** *while calculating such damages, the Tribunal/court is required to have some guesswork taking into account the inflation factor. This aspect is well discussed by M.J.Rao, J. (as he then was) in P. Satyanarayana v. I. Babu Rajendra Prasad. The learned Judge has given a Classification of Injuries: A Useful Guide, and has observed thus:*
>
> > *"24. If a collection of cases on the quantum of Damages is to be useful, it must necessarily be Classified in such a way that comparable cases can be grouped together. No doubt, no two cases are alike but still, it is possible to make a broad classification which enables*

one to bring comparable awards together. Such classifications have been made by Bingham in his Motor Claims Cases, Munkman in his Employer's Liability and Kemp & Kemp in their Quantum of Damages. (Munkman , p. 181.)

* * *

26. Cases relating to injuries have been classified into four categories i.e. (a) total wrecks; (b) partial wrecks and (c) where limbs and eyes and other specific parts of the body are lost, which can be subgrouped according to the type of limb lost and (d) smaller injuries which cannot be specifically grouped but for which compensation can be assessed by comparison with injuries of loss of limbs e.g. comparing permanent 'wrist injuries' with 'loss of hand', or comparing a temporary broken arm with the loss of the arm etc. Such comparisons are often made by Judges. Munkman points out that in America, Mr Melvin M. Belli, an eminent lawyer, classified injuries into 11 categories as: (1) back; (2) traumatic amputation of leg; (3) paralysis; (4) hand or arm off; (5) death; (6) multiple fractures; (7) burns; (8) personality change; (9) blindness; (10) brain injury and (11) occupational diseases. By 1967, awards (say) for blindness had risen to 9,30,000 dollars(Munkman, pp. 181-82). Today

after 20 years, these awards must have gone up further. The 'total wreck' category comprises of cases of complete incapacity for work and virtually no enjoyment of life e.g. paralysis, severe brain injury causing insanity, multiple injuries leaving the victim a total cripple. The 'partial wreck' cases are also cases where the entire body is affected and not one set of limbs alone as in the third category. Cases of brain injuries resulting in a personality change and multiple injuries with grave disfigurement fall in this second category. The third category does not present much difficulty for sub-classification. The fourth category deals with minor injuries in a limb which can be compared with major injuries in the same limb.

Past inflation – Relevancy of date of accident

27. The dates of accident resulting in similar injuries have great relevancy. For example, if a particular conventional sum of (say) Rs 10,000 was awarded towards the non-pecuniary damages of loss of expectation of life, loss of amenities and pain and suffering – all put together – in a case of amputation of a leg consequent to an accident in 1970, the award to be made for an

identical loss today would have to be upgraded from the 1970 value to its value in 1987, having regard to the erosion of the value of the rupee. This can be done by comparing the cast of living index in 1970 with that in 1987. Charlesworth on Negiligence, 6th Edn., 1977, para 14, says, the 'conventional figures' must keep 'pace with the times in which we live'. He says that this can be well illustrated by considering the class of injury resulting (say) in the loss of sight in one eye and the conventional sum lay around £ 2000 about a quarter of a century ago but today in 1977 it will probably exceed £ 5000 or it ought to do. Kemp & Kemp on Damages, 1982, Chapter 7, para 7001, say: if a court is seeking to make a comparison, with some earlier award (for non-pecuniary losses) and if by the date of the comparison, the currency in which the earlier award was made has declined by, say, 50 per cent, one must surely double the earlier award in order to make a valid comparison. The authors have compiled two tables (at paras 7007 and 7008), one showing the current level of general damages for 'pain and suffering' and 'loss of amenities' in cases of severe injury and the other showing similar awards for earlier years, and have compared whether courts are or are not keeping pace with

inflation. The authors ask, why tortfeasors alone, as a class should be excused from paying the value-based price? In Walker v. John McLean & Sons Ltd.-the Court found that while the value of the pound fell by 50% between 1957 and 1972 (over a period of 15 years), there was a steeper fall between 1973 to 1978 (within 5 years) when it again fell by 50% (vide Kemp & Kemp's Tables). 'Conventional' figures, if they do not keep pace with inflation, might indeed become 'contemptible'. Kemp & Kemp point out that an award of £ 16,000 in 1879 would be about £ 5,00,000 in 1982. After Walker case courts in England are carefully adjusting awards for 'pain and suffering' and 'loss of amenities' to keep pace with inflation."(TAC pp. 244-46, paras 22-24)

14) Here in this case the claimant is a Barber. A perusal of the the Handicap Certificate paper no. 34-C, issued by the Chief Medical Officer, Nainital shows that the left leg of the claimant has become disabled to the extent of 40% which would vitally affect not only his working capacity but also his livelihood.

15) The Claims Tribunal has assessed the income of the appellant at Rs.4,500/-per month or Rs.54,000/- per annum which appears just and proper. The multiplier of 16 selected by the Claims Tribunal is also appropriate. The amount of Rs.3,45,600/- awarded by the Claims tribunal needs no interference. However, the claims Tribunal has not awarded any amount for pain and suffering. According to the appellant

he remained hospitalized for three months. In our opinion a sum of Rs.20,000/- would be sufficient compensation for pain and sufferings. Thus the petitioner is entitled to get total compensation of Rs.3,45600 + 22,000 + 20,000 = Rs.3,87,600/-.

16) Counsel for the appellant has referred the case of **R.D. Hattangadi vs. M/s Pest Control (India) Pvt. Ltd. AIR 1995 SC 755.** The Apex Court in that case has observed as under:

> *"So far non –pecuniary damages are concerned, they may include (i) damages for mental and Physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.*
>
> ***12.*** *In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."*

17) We have given compensation towards pecuniary loss as well as we have also awarded compensation towards pain and suffering, therefore, the observations made by the Apex court has been fully complied with.

18) The claims Tribunal has not awarded interest as provided under Section 171 of the Motor Vehicle Act. Section 171 of the Motor Vehicles Act reads as under:

171. Award of interest where any claim is allowed-

> *Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.*

17) The Apex Court in the case **Kaushnuma Begum vs. New India Assurance Company Ltd; (2001) 2 SCC 9** as held as under:

> *"24. Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that "in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf". Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The*

nationalised banks are now granting interest at the rate of 9 % on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9 % per annum from the date of the claim made by the appellants."

19) It is well settled that the Claims Tribunal is required to award interest on the amount of compensation at the prevalent rate of interest on fixed deposit for one year by the nationalized Banks. In the case **Bijoy Kumar Dugar vs. Vidya Dhar Dutta (2006) 3 SCC 242,** the Apex Court has held as under:

"*MACT has awarded interest at the rate of 10% per annum on the amount of compensation from the date of filing of the claim application till the date of payment. It is a discretionary relief granted by MACT and, in our view, the discretion exercised by MACT cannot be said to be inadequate and inappropriate.*"

20) Award of interest would normally depend upon the bank rate prevailing at the relevant. In the present case, we are of the opinion that interest at the rate of 7% per annum from the date of filing of the claim petition, shall meet the ends of justice.

21) Accordingly, the appeal is allowed. The compensation awarded by the Claims Tribunal is enhanced to Rs.3,87,600/-

along with pendente lite and future interest at the rate of 7% per annum.

22) No orders as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**

Dated: November 20, 2006

*Dhyani